

# Notice

## All Cigar and Tobacco Products Permit Holders

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Texas Comptroller of Public Accounts

### New laws take effect September 1, 2009

This is to inform you of House Bill 2154 passed during the 81st Legislative Session. This bill, in part, amends provisions in the Cigars and Tobacco Products Tax (Chapter 155 of the Texas Tax Code) related to calculating the state excise tax due on tobacco products (other than cigars and cigarettes), certain record keeping and reporting requirements and the allocation of additional revenue.

This notice applies only to tobacco products, including chewing tobacco, moist and dry snuff, pipe tobacco, roll-your-own tobacco and any other article or product that is made of tobacco or a tobacco substitute and that is not a cigar or cigarette.

#### **Beginning Sept. 1, 2009:**

- Manufacturers and distributors must calculate the state excise tax due on tobacco products using the manufacturer's listed net weight for each individual can or package of these products and the rate in effect for the current state fiscal year.
- Distributors, wholesalers, bonded agents, export warehouse operators and retailers must ensure that their records of tobacco products purchased or received show the manufacturer's listed net weight for each tobacco product.
- Manufacturers, distributors and wholesalers who report to the Comptroller's office the tobacco products they sell, distribute, exchange or use in Texas must include in those reports the manufacturer's listed net weight for each tobacco product.

Following are the changes to the Cigars and Tobacco Products Tax (Chapter 155) by section.

#### **Section 155.0211**

##### **New Tax Base**

To calculate the excise tax due on tobacco products (other than cigars or cigarettes), affected manufacturers and distributors must use the manufacturer's listed net weight for each can or package and the applicable tax rate in effect for the current state fiscal year. This applies to manufacturers outside Texas who distribute promotional or "gratis" tobacco products in Texas; manufacturers in Texas who first sell, distribute or exchange tobacco products in intrastate commerce; and distributors who receive tobacco products for the purpose of making a first sale or distribution in Texas.

##### **New Tax Rates**

Section 155.0211 was amended to impose a different tax rate according to the state's fiscal year. The rate applies to each ounce of net product weight and all fractional parts of an ounce. A tax rate in effect for a state fiscal year does not affect taxes imposed before that fiscal year, and the rate in effect when those taxes were imposed continues in effect for purposes of the liability for and collection of those taxes.

Fiscal Year	Rate
2010 (Sept. 1, 2009 - Aug. 31, 2010) .....	\$1.10 per ounce*
2011 (Sept. 1, 2010 - Aug. 31, 2011) .....	\$1.13 per ounce*
2012 (Sept. 1, 2011 - Aug. 31, 2012) .....	\$1.16 per ounce*
2013 (Sept. 1, 2012 - Aug. 31, 2013) .....	\$1.19 per ounce*
2014 (Sept. 1, 2013 and each fiscal year thereafter) .....	\$1.22 per ounce*

\*Plus the proportionate rate on all fractional parts of an ounce

## Tax Rate Table for State Fiscal Year 2010

The following table is provided as a guide and shows the actual tax rates and proportionate rates for fractional parts of an ounce, up to two ounces, to use from Sept. 1, 2009, through Aug. 31, 2010. An expanded chart showing tax rates for individual cans or packages weighing up to 15 ounces for state fiscal years 2010 and beyond is available at [http://www.window.state.tx.us/taxinfo/cig\\_tob/tob\\_rates\\_other.html](http://www.window.state.tx.us/taxinfo/cig_tob/tob_rates_other.html).

Tax rate per ounce .....\$1.10	
Total ounces in can or package	Tax for an individual can or package
1.2 ounces or less .....	\$1.32
1.3 ounces.....	\$1.43
1.4 ounces.....	\$1.54
1.5 ounces.....	\$1.65
1.6 ounces.....	\$1.76
1.7 ounces.....	\$1.87
1.8 ounces.....	\$1.98
1.9 ounces.....	\$2.09
2.0 ounces.....	\$2.20

## Calculation of Tax

### Individual Can or Package

For an individual can or package weighing less than 1.2 ounces, the amount of tax due is equal to the amount of tax due on an individual can or package weighing 1.2 ounces. For example, from Sept. 1, 2009, through Aug. 31, 2010 (fiscal 2010), the tax due on a can of snuff weighing 1.2 ounces would be \$1.32 (see Tax Rate Table for State Fiscal Year 2010 above). The tax due on a can of snuff weighing 1.1 ounces would also be \$1.32. Similarly, the tax due on a package of chewing tobacco weighing 1 ounce would be \$1.32, just as the tax due on a package of chewing tobacco weighing 0.98 of an ounce would be \$1.32.

For an individual can or package weighing more than 1.2 ounces, the tax due is calculated by multiplying the net weight by the tax rate in effect for the current state fiscal year. For example, in fiscal 2010 the tax due on a can of snuff weighing 3.3 ounces would be \$3.63. The

tax is calculated by multiplying the total number of ounces (3.3) by the tax rate for each ounce (\$1.10), for a total tax due of \$3.63.

### Multiple Cans or Packages

The tax imposed on a unit that contains multiple individual cans or packages is the sum of the taxes imposed on each individual can or package intended for sale or retail distribution.

**Example 1:** On Sept. 10, 2009, a distributor receives from a manufacturer, for the purpose of making a first sale in Texas, a unit of snuff consisting of 20 individual cans weighing 1.2 ounces each. Individual cans of snuff weighing 1.2 ounces can be purchased by consumers from a tobacco retailer. Because each individual can weighs 1.2 ounces, the effective tax rate is \$1.32 for each can. The total tax due for each unit of 20 cans is calculated by multiplying the effective tax rate for each individual can (\$1.32) by the total number of individual cans in the unit (20), for a total tax due of \$26.40.

**Example 2:** On Nov. 1, 2009, a distributor receives from a manufacturer, for the purpose of making a first sale in Texas, a unit of snuff consisting of 10 individual cans weighing 1.3 ounces each. Individual cans of snuff weighing 1.3 ounces can be purchased by consumers from a tobacco retailer. Because each individual can weighs more than 1.2 ounces, the effective tax rate is \$1.10 per ounce and all fractional parts of an ounce. The tax due for each can is calculated by multiplying the net weight (1.3 ounces) by the effective tax rate (\$1.10), for a tax due for each can of \$1.43. The total tax due for each unit of 10 individual cans is calculated by multiplying the tax due on each individual can (\$1.43) by the total number of individual cans in the unit (10), for a total tax due of \$14.30.

**Example 3:** On March 1, 2010, a distributor receives from a manufacturer, for the purpose of making a first sale in Texas, 24 units of snuff. Each unit consists of four individual tubs weighing 12 ounces each. Individual tubs of snuff weighing 12 ounces can be purchased by consumers from a tobacco retailer. The total number of individual tubs is 96 (24 units x 4 tubs per unit). Because each individual tub weighs more than 1.2 ounces, the effective tax rate is \$1.10 per ounce and all fractional parts of an ounce. The tax due for each tub

is calculated by multiplying the tax rate for each ounce (\$1.10) by the total number of ounces in each tub (12), for a tax due of \$13.20. The tax due for each unit is calculated by multiplying the tax for each tub (\$13.20) by the number of tubs in each unit (4), for a tax due of \$52.80. The total tax due for the 24 units of snuff is calculated by multiplying the tax due on each unit (\$52.80) by the total number of individual units (24), for a total tax due of \$1,267.20 (\$52.80 x 24).

## **Sections 155.101, 155.102, 155.103, 155.105 and 155.111**

### **Reporting and Record Keeping Requirements**

Section 155.101 was changed to require that the records maintained by distributors, wholesalers, bonded agents, export warehouse operators and retailers for each purchase or receipt of tobacco products must show the manufacturer's listed net weight for each can or package.

Section 155.102 was changed to require that the records maintained by distributors and wholesalers for each sale, distribution, exchange or use of tobacco products must show the manufacturer's listed net weight for each can or package of tobacco products. Purchaser invoices must also include the manufacturer's listed net weight for each tobacco product can or package.

Section 155.103 was changed to require that records maintained by manufacturers who sell or distribute tobacco products in Texas must show the manufacturer's listed net weight for each can or package of tobacco products that is sold or distributed. Manufacturers who distribute promotional or "gratis" tobacco products in Texas must show the net weight for each can or package of tobacco products on their monthly reports to the Comptroller's office. September 2009 reports will be due to the Comptroller's office by Oct. 31, 2009, but since that date falls on a Saturday, the reports will be due by Nov. 2, 2009.

Section 155.105 was changed to require that the reports filed by distributors and wholesalers for tobacco products sold to retailers show the manufacturer's listed net weight for each unit of tobacco products. Reports for sales made in September 2009 must be filed by Oct. 25, 2009. The Retailer Inventory Tracking System, the Comptroller's Internet-based system used to report these sales, is being changed to accept the listed net weight for tobacco products sold.

Section 155.111 was changed to require that distributors include in their monthly reports of tobacco products purchased, received or acquired the net weight as listed by the manufacturer for each can or package of tobacco products. The *Texas Distributor Monthly Report of Cigar and/or Tobacco Products* (Form 69-133, which the Comptroller's office mails to distributors each month) is being revised accordingly. Revised reports with updated instructions will be mailed to distributors in late September 2009. Reports for September 2009 will be due to the Comptroller's office by Oct. 31, 2009, but since that date falls on a Saturday, the reports will be due by Nov. 2, 2009.

## **Section 155.2415**

### **Allocation of Additional Revenue**

This section was changed to require that the additional revenue collected as a result of the way the tax on tobacco products is calculated under the provisions of HB 2154 will be allocated to the credit of the Physician Education Loan Repayment Program account.

For more information, see the Cigar and Tobacco Products Tax section of our Web site at [http://www.window.state.tx.us/taxinfo/cig\\_tob/cig\\_tob.html](http://www.window.state.tx.us/taxinfo/cig_tob/cig_tob.html)



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For taxpayer assistance, call (800) 862-2260, or call (512) 463-3731.

Our e-mail address is [tax.help@cpa.state.tx.us](mailto:tax.help@cpa.state.tx.us).